

REMARKS

Reconsideration and allowance of the subject patent application are respectfully requested.

An amendment of a formal nature has made to claim 7.

Claims 1, 2, 5 and 6 were rejected under 35 U.S.C. Section 101 as allegedly being directed to non-statutory subject matter. Claim 1 has been amended to recite that the system is implemented "on a computer apparatus." Conforming amendments have been made to claims 2, 5 and 6. Applicant respectfully submits that these claims are now even more clearly directed to statutory subject matter, not to "a pure software system" as alleged in the office action.

Claims 1, 2, 5-8 and 11-16 were rejected under 35 U.S.C. Section 103(a) as allegedly being "anticipated" by Skoudis et al. ("Malware: Fighting Malicious Code" Prentice Hall, 2003). As explained below, Skoudis et al. is not prior art to the claims of the subject patent application. Consequently, this rejection is improper and must be withdrawn.

On the basis of searches on the internet, Applicant understands that Skoudis et al. was published in November 2003. In support of this, Applicant encloses extracts from four websites which all give the publication date as November 2003. These websites are:

<http://www.zeltser.com/malware-book/>

<http://www.amazon.com/Malware-Fighting-Malicious-Computer-Networking/dp/0131014056>

<http://www.pearson.ch/Informatik/PrenticeHallPTR/1471/9780131014053/Malware-Fighting-Malicious-Code.aspx>

SHIPP, A.
Appl. No. 10/500,954
Response to Office Action dated October 30, 2008

<http://www.alibris.com/booksearch.detail?invid=9689575962&browse=1&qwork=8690093&qsort=&page=1>

The first web link appears to be a web page of the second author of Skoudis et al. (i.e., Lenny Zeltser) who collaborated with Ed Skoudis. The other three web pages are taken from web sites offering Skoudis et al. for sale.

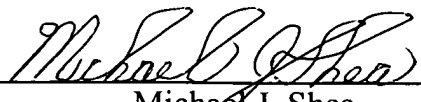
The November 2003 publication date of Skoudis et al. is after the April 25, 2003 filing date of the UK application from which the subject patent application claims priority. A copy of the English-language UK priority application is contained in the USPTO image file wrapper for the subject patent application. This priority application provides support for the claimed subject matter. Consequently, Skoudis et al. is not prior art to the pending claims and withdrawal of the rejection based on Skoudis et al. is respectfully requested.

Applicant's argument that Skoudis et al. is not prior art does not constitute (and should not be construed to constitute) acquiescence in the propriety of the characterizations of Skoudis et al. made in the office action.

The pending claims are believed to be allowable and favorable office action is respectfully requested.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: 
Michael J. Shea
Reg. No. 34,725

MJS:mjs
901 North Glebe Road, 11th Floor
Arlington, VA 22203-1808
Telephone: (703) 816-4000
Facsimile: (703) 816-4100